88-1444

Supreme Court, U.S.
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

MICHAELA BERESTEANU GOLIN,

Petitioner,

v.

FMC CORPORATION and GEORGE E. MOEHRINGER.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MICHAELA BERESTEANU GOLIN	:	Civil No. 82-2363 (GEB)
Plaintiff,	:	
v.	:	O P I N I O N
FMC CORPORATION and GEORGE E. MOEHRINGER,	:	
Defendants.	:	

BROWN, District Judge

I. Procedural History

Plaintiff, Michaela Beresteau Golin, Ph.D., brought this action against defendants, FMC Corporation ["FMC"] and George E. Moehringer on the grounds that she was discriminated against on the basis of her sex, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq. (1976) and in violation of the New Jersey Law Against Discrimination ["NJLAD"] N.J.S.A. §§

10:5-12(a) and 10:5-12(d). Additionally, she contends that the defendant FMC, by effecting her termination, committed a common law breach of contract, and through Moehringer, her supervisor, committed a common law tort of assault and battery, malicious interference with contract, and a prima facie wrongful discharge tort. The plaintiff also alleges that Moehringer committed an assault and battery, prima facie wrongful discharge tort and maliciously interfered with her employment contract in violation of state common law.

Plaintiff filed her original complaint against FMC and Moehringer on July 29, 1982. She alleged, against FMC, a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq., the Law Against Discrimination of the State of New Jersey,

N.J.S.A. § 10:5-12 for sexual harassment; and pendent state tort claims for assault and battery and breach of contract. She alleged, as against Moehringer, the pendent state tort claim of assault and battery. By amendment of her complaint, dated February 6, 1984, plaintiff realleged her earlier causes of action, and alleged a newly asserted count against both defendants for the common law tort of malicious interference with the employment contract and wrongful discharge.

During the course of discovery, plaintiff and her counsel apparently reached an impasse. Counsel was relieved and plaintiff proceeded pro se. Because of plaintiff's pro se status, this Court attempted to accommodate her whenever possible. Nevertheless, pre-trial and trial proceedings became increasingly disruptive due to plaintiff's conduct

and, as a result, the Court ordered monetary sanctions against plaintiff on four separate occasions.

On April 23, 1986, when this case was four years old (the Final Pretrial Order having been filed on June 5, 1984), I held a status conference in anticipation of setting this case down for an early trial date. The case was one of the oldest on the Court's docket and both parties had sought a prompt trial date. Shortly thereafter, defendant Moehringer's counsel was suspended from the practice of law (for matters wholly unrelated to this case), and new counsel was substituted.

On October 17, 1986 by telephone conference call, I ordered trial briefs to be submitted by December 17, 1986 and allowed limited redepositions of the parties to be taken by that date. I

ordered the trial date to be set for January 7, 1987.

On December 17, 1986, the plaintiff filed a motion to extend discovery and adjourn the trial date. The motion was denied.

On January 7, 1987, a jury was selected, and the parties were advised at that time that trial would go forward as soon as the trial then in progress concluded.

On January 13, 1987 the plaintiff filed a motion for my recusal based in part on my refusal to grant a further adjournment. That motion, along with the plaintiff's renewed motion for a continuation of discovery and adjournment of the trial data, was argued on January 16, 1987 and were denied. Plaintiff's motion for a certification of the order denying recusal and denying continuation of the

trial was also denied.

Motions in limine were then rescheduled for January 19, 1987, a federal holiday, in order that trial could commence on January 20, 1987. By special accommodation, the federal courthouse was opened and supporting clerical and security staff reported to work. Nonetheless, the plaintiff failed to appear for hearing or the motions. The motions were adjourned until January 20.

The plaintiff failed to appear on January 20. Defendant's motion for involuntary dismissal of the complaint pursuant to Fed.R.Civ.P. 41(b) was denied without prejudice to renew. At that time the Court issued an Order to Show Cause why the complaint should not be dismissed for failure to prosecute and for failure to comply with Court orders. The order was returnable on January 22, 1987. The

United States Marshal was ordered to serve the order personally.

Plaintiff finally appeared in response to the Order to Show Cause on January 22. At her request, the Court ordered the motions in limine to be heard on January 27, 1987, and the trial to be continued until January 28, 1987. At the hearing on January 27, the trial date was again adjourned at plaintiff's request until January 30.

On January 30, plaintiff and defendants made opening statements, but the plaintiff stated that she was not prepared to proceed with witnesses. Trial was again adjourned to re-commence on February 2. Further trial delays followed, including one on February 10 when plaintiff again failed to appear requiring yet another order to show cause and further monetary sanctions. The case

finally went to the jury on February 17.

At the outset of this trial, the Court assumed jurisdiction of the pendent state law tort claims as properly arising out of a common nucleus of operative facts, and permitted trial on these issues before the jury. After motion by defendants, and argument by the parties, this Court dismissed the breach of contract claim against FMC (Vol. 5, p. 111, lines 1-3), and also subsequently concluded that all tort claims against FMC Corporation were subsumed under the claims arising under Title VII and NJLAD. (Vol. 8, p. 25, lines 9-11). Thereafter, the tort claims of assault and battery and malicious interference with the employment contract against Moehringer were the only issues tried to a conclusion before the jury.

A special verdict form was submitted and the jury returned a verdict for Moehringer on all counts. (Vol. 12, p. 34, line 18 through p. 37, line 3). By special verdict, the jury found by a preponderance of the evidence that Moehringer was not guilty of assault, not guilty of battery, and not guilty of malicious interference with employment, (Vol. 12 p. 35, line 4 through p. 36, line 25), under the law and facts as charged. (Vol. 11, p. 123, line 12 through p. 132, line 8).

This Opinion resolves plaintiff's Title VII and NJLAD claims. This Opinion incorporates and adopts as the order of this Court the special verdict of the jury as to all claims against defendant Moehringer, and constitutes this Court's findings of fact and conclusions of law as to all issues in the sex discrimina-

tion case tried before the Court, pursuant to Federal Rule of Civil Procedure 52(a).

As will be noted by specific reference throughout this Opinion, the testimony of the plaintiff conflicted with that of the defendant Moehringer and with defense witnesses on many crucial points. This Court had ample opportunity to observe the demeanor of the witnesses and to assess their credibility. I find, as did the jury, that, where there was a conflict of testimony, the testimony of the plaintiff was not worthy of belief, and that the testimony of the defendants' witnesses was credible.

Although plaintiff's conduct at the trial was frequently disruptive and improper, this Court took every precaution to assure that the jury was unaware of such actions. Similarly, in assessing

the credibility of plaintiff as a witness for the purposes of this Opinion, I have not considered any of the conduct which occasioned the sanctions and reprimands. I have based my evaluation solely on her testimony itself, her demeanor, interest in the case, the extent to which she was supported or contradicted by other evidence which I found credible in accord with the established tests for determining a witnesses' credibility. See, e.g., Devitt & Blackmar, § 17.01 et seq. (3Ed. 1977)

II. FINDINGS OF FACT

1. Plaintiff was employed by FMC at its Princeton, New Jersey Research and Development Center as a Senior Programmer/Analyst from November 1979 until April 9, 1981 (Vol. 5, p. 152, lines 9-11, p. 155, lines 14-15, Vol. 6, p. 36, lines 12-13). During most of her employ-

ment, except for a period between July 1980 and October 1980 when she was temporarily transferred to another group, she was assigned to work in the Technical Computing Services ["TCS"] Group and was directly under the supervision of defendant Moehringer. (Vol. 5, p. 152, lines 9-11, p. 153, lines 12-14, p. 161, lines 8-11, p. 164, line 17 through p. 165 line 2).

2. Plaintiff was granted a Doctor of Philosophy (Ph.D) degree in theoretical nuclear physics from Rutgers University in 1975. The defendants did not dispute that throughout her educational years, plaintiff was consistently at or near the top of her class. (Vol. 9, p. 89, line 9). Upon receiving her doctoral degree, plaintiff was employed as a post-doctoral research associate at Florida State University from 1975 through 1976.

Between 1976 and December 1978, plaintiff was employed as a Research Associate at Brookhaven National Laboratory. (Vol. 5, p. 148, line 25 through p. 149, line 9).

3. Prior to being hired, plaintiff was interviewed by Moehringer, Dr. John Erjavec, and David Hall. (Vol. 5, p. 151, lines 7-10). Hall testified that after he interviewed Golin he recommended to Moehringer that she not be hired on the grounds she would not discuss her background or her previous employer. (Vol. 6, p. 266 line 10 through p. 267, line 12). Hall also testified credibly that he would not have hired the plaintiff as a senior programmer/analyst due to her lack of computer science experience and because he did not believe she could do systems analyst work. (Vol. 6, p. 265, line 18 through p. 266, line 5). Erjavec and Moehringer decided nonetheless to

hire Golin because the position they were seeking to fill had been vacant for almost two years, and because they previously had employed a Ph.D. in the position with the positive results. (Vol 6, p. 267, line 13 through p. 268, line 4). Moehringer thought that plaintiff would be a satisfactory employee if she were motivated to do non-scientific work, could learn the work area independently and rapidly, and interface well with scientists. (Vol. 2, p. 81, lines 14-20, JD-6).

After being hired, plaintiff was assigned to work in the TCS group which was supervised by defendant Moehringer and managed by Erjavec. Erjavec also managed three other groups: Automation and Instrumentation Services, ["A&IS"], Process Analysis, and Statistical Analysis. (Vol. 6, p. 101, line 24 through p.

102, line 3). Erjavec was ultimately responsible for hiring and discipline decisions, and defendant Moehringer recommended and participated in the hiring, firing, training, promotion, and discipline of his subordinates. (Vol. 2, p. 11, line 10 through p. 18, line 5). From 1968 to 1979, Moehringer supervised approximately 20 employees at FMC. (Vol. 8, p. 138, line 11).

4. Moehringer testified credibly that shortly after plaintiff began with FMC, he became disappointed with her performance. Moehringer testified that Golin's work significantly exceeded time estimates and was programmed inefficiently and unsuccessfully. He testified that she refused his assistance and would not demonstrate her work to him. He communicated this disappointment to his manager, Erjavec, who urged Moehringer to continue

working with plaintiff to improve her performance because the position was a difficult one to fill, and because FMC had spent about $6,000 on an agency fee to recruit the plaintiff. (Vol. 8, p. 141, lines 2-21, p. 143, line 16 through p. 144, line 12, p. 145, line 5 through p. 151, line 19).

5. In February 1980, Golin was assigned to the FARMS Index Project which was a medium-sized project with an intermediate level of difficulty estimated to take approximately six weeks. (Vol. 8, p. 162, line 12 through p. 163, line 5). The plaintiff spent 22 weeks on this project and the program only functioned minimally after the work was completed. (Vol. 8, p. 164, lines 1-7). The program was replaced the following year by one created by another programmer outside of Moehringer's group. The customer was

dissatisfied with Golin's work, and did not use Moehringer's group to complete the assignment, or for any other work for five Years. (Vol 8, p. 166, lines 6-14).

6. During plaintiff's work on the FARMS Index Project, she refused to communicate interim progress to Moehringer. She avoided him, skipped scheduled meetings, and hung-up when he called on the telephone to inquire about the program. She did not show him a single line of code, a flow diagram or documentation. In late February or early March of 1980, Moehringer complained to Erjavec about the plaintiff's job performance. (Vol. 8, p. 151, line 1 through p. 60, line 21). Also in late February 1980, Golin complained to Erjavec, in Moehringer's presence, about his habit of "walking into her" and standing close to her when discussing work assignments. (Vol. 5, p.

163, line 8 through p. 164, line 2).

7. The plaintiff testified that in late April 1980, she was to give a presentation in Middleport, New York. She testified that three other FMC Princeton employees, including Moehringer, and one Philadelphia employee were to be there. The plaintiff testified that Moehringer insisted that she go up the night before with him and one of the other employees and that she spend the night in the hotel provided by FMC. Golin testified that Moehringer became very angry when she decided to go to Middleport the morning of the presentation rather than to travel with him the night before. Golin acknowledged that Moehringer never suggested that they share a room. (Vol. 5, p. 160, line 12 through p. 161 line 3).

Plaintiff testified that subsequent to the Middleport incident conflicts with

Moehringer became more frequent. (Vol. 5, pp. 161-62). Plaintiff's account was not credible. Based upon my assessment of the credibility of Golin and Moehringer, I find that Moehringer's denial of the incident was credible. (Vol 9, p. 68, line 1). I am unable to give any credence to the plaintiff's interpretation of the facts. As was the case throughout the trial, the evidence simply does not support the plaintiff's version of the facts, nor does it support the inferences and conclusions the plaintiff draws and seeks to have this Court draw.

8. In late May or early June 1980, Moehringer complained to Erjavec in writing about the plaintiff's performance and requested Erjavec to allow him "to exercise the perrogative [sic] [he had] as the supervisor of a new exempt employee and discharge her from FMC before the

problems become more serious." (JD-17; Vol. 9, p. 21, line 17 to p. 23, line 12). Erjavec did not approve the recommendation to discharge. (Vol 6, p. 163, line 5).

9. In late July 1980, Erjavec arranged for plaintiff to be transferred temporarily to the A&IS section to work under the direction of David Hall and Mike Zadoff. (Vol. 6, pp. 164-65, p. 235, line 20 through p. 236, line 3, P. 12). Golin worked in this group until October 1980, (Vol. 5, p. 164, line 17 through p. 165, line 2 and p. 166, lines 19-24), at which time she returned to her regular group and was again under the direct supervision of Moehringer. (Vol. 9, p. 24, lines 9-13). During the temporary assignment, Hall was unable to directly observe the progress of much of plaintiff's work. When requested by Erjavec

for an evaluation in preparation for the plaintiff's November performance review, Hall reported that her work was standard. (Vol. 6, p. 236, lines 4-17). In rating her, Hall did not rate plaintiff as a senior programmer/analyst because he did not think she was one. (Vol. 6, p. 270, lines 15-21). Additionally, although Hall asked Golin for her opinion on the possibility of her being transferred to his group, he testified that he did not want to see this happen because Golin lacked both background to discuss problem areas with users and the ability to formulate problem solutions. (Vol. 6, p. 269, line 7 through p. 270, line 8).

10. About one month after Golin returned to the TCS group, in November 1980, Moehringer provided Erjavec with an 11-page Performance review of her work. (Vol. 9, p. 25, line 11 through p. 26,

line 17, JD-19). The evaluation was provided in anticipation of the plaintiff's annual review, and was intended to provide Erjavec with details concerning projects on which the plaintiff had worked which would substantiate Moehringer's claims that Golin would not be a successful programmer. (Vol. 9, p. 26, lines 18-24). Erjavec reviewed this performance evaluation with the plaintiff. She disputed most of the comments made by Moehringer, and claimed that he was highly biased against her. (Vol. 5, p. 170, lines 7-19). Specifically, the plaintiff challenged Moehringer's view that she took two to three times longer than a competent programmer would take to complete her projects. (Vol. 5, p. 177, lines 2-9).

11. Because of the disparity between plaintiff's assertions and

Moehringer's performance evaluation, and because Hall told Erjavec he was unable to supervise plaintiff closely enough to provide an independent estimate, Erjavec decided to replicate some of the work previously done by Golin to attempt an independent evaluation and formulate a more precise basis on which to recommend annual salary action for plaintiff. He selected an assignment on which plaintiff had expended and logged 44 hours and which she had not completed. Moehringer had estimated that it would take approximately one day to complete. (Vol. 9, p. 28, line 11 through p. 29, line 3). Although he had little recent computer programmer experience and had never used this computer before, Erjavec completed the assignment in 9 hours. (Vol. 6, p. 102, line 17 through p. 103, line 4, p. 165, lines 3 through line 13; p. 166; and

p. 229, lines 5-16). He concluded that Moehringer's time estimate was reasonable. (Vol. 6, p. 230, lines 17-19).

12. As a result of his own review, Hall's evaluation and the performance evaluation of Moehringer, Erjavec determined that, on balance, the plaintiff, for her first full year's work, should be rated a 2, (satisfactory, but requires improvement - some objectives not met), and he recommended her for a 5.8% salary increase. (Vol. 6, p. 107, lines 13-21; p. 126, line 24 through p. 128, line 25; p. 133, line 14 through p. 134, line 8, and p. 231, lines 3-25). In the comments section of the performance review, Erjavec wrote:

> This has been Dr. Golin's first year with FMC and she has a significant amount of learning to do. Although she is an experienced scientific Fortran programmer, she had to learn the DEC PDP 11/70 system, the VAX 11780 sys-

> tem and some new software packages such as DRS. However, even taking this learning curve into account, there seems to be progress required to bring her to full expected efficiencies. Her two main strengths in her performance are her good interaction with users and her good program documentation. Her weaknesses appear to be software development effort taking two to three times that expected by her supervisor, George Moehringer, and software that runs more slowly than anticipated by her supervisor. These could both probably be overcome with more frequent communication and, initially, direction.

(P-12; Vol. 6, p. 126, lines 11-25). Erjavec also testified that he was hoping that the plaintiff's work would improve through counseling and coaching by Moehringer. (Vol. 6, p. 166, lines 20-22). Erjavec also advised Golin that she should report to Moehringer in his office to keep him informed of her work and for

coaching. (Vol. 5, p. 179, lines 12-21).

Golin acknowledged at trial that she would not meet with Moehringer in his office to discuss her work. (Vol. 5, p. 192, lines 20-21). She testified that she and other group members requested that Moehringer hold group meetings, but that this request was denied. (Vol. 5, p. 191, lines 18-19). Plaintiff implied that this refusal was directed towards creating a situation where Moehringer could be alone with her, in furtherance of his harassment. However, the testimony of other FMC employees who worked under Moehringer refutes Golin's implication. Specifically, Golin was not the only employee who requested and was refused group meetings; all requests were refused. (Vol. 3, p.78, lines 16-23). Further, all of the employees met regularly with Moehringer in his office to

discuss the progress of their work. (Vol. 3, p. 86, line 24 through p. 87, line 21). None testified that this was harassing, and in fact did testify that they expected to discuss their work with Moehringer because he was the supervisor. (Vol. 3, p. 126, line 16-22).

13. During the time between November 1980 and February 1981, the plaintiff continued to work under the supervision of Moehringer. Moehringer testified that during this period the plaintiff continued to take too long to complete projects and programmed inefficient programs. (Vol. 2, p. 34, lines 11-21, Vol. 9, p. 24, lines 14-25)

14. In February 1981, plaintiff submitted a request to attend a Macro/Fortran systems services training course. Moehringer felt that this particular course was inappropriate and rejected the

request. Subsequently, the plaintiff spent 30 hours of company time seeking to reverse the decision. Plaintiff fought the refusal and appealed to Erjavec who on February 13, 1981, denied the training authorization request. In a memo to the plaintiff, Erjavec wrote: "Signing up for courses should be discussed and approved by an employee's supervisor. Since [Moehringer] does not feel that this course is an appropriate one for you, please cancel your reservation if you have one." (JD-27). Erjavec thought the plaintiff's action in spending 30 hours to seek reversal was outrageous. (Vol. 9, p. 31, line 9 through p. 32, line 19, p. 34, line 17 through p. 35, line 5, Vol. 6, p. 234, lines 3-11).

15. On February 20, 1981, at a meeting between Golin and Erjavec, Erjavec explained to plaintiff that

Moehringer was still unhappy with her work, and that Moehringer had advised him that the plaintiff should be terminated. (Vol. 9, p. 39, line 3 through p. 40, line 5). Erjavec told Golin she was not being fired on the spot but suggested that she might be wise to seek other employment. (Vol. 6, p. 192, lines 13-16, p. 193, lines 8-10). The basis for this advice was Golin's failure to seek advice or coaching and her failure to make any progress. Erjavec believed Golin was lacking in important areas which could have been improved if she interacted more with Moehringer and sought his advice, but because she did not do this, Erjavec felt the situation hopeless. (Vol. 6, p. 192, line 19 through p. 193, line 7).

At this time, the plaintiff requested and was granted a two-week vacation to begin immediately. (Vol. 6, p. 222, lines

17-22). The plaintiff was on vacation from February 23, 1981 through March 9, 1981. (Stip. ¶ 2.10). The plaintiff testified that during the week of February 23 she returned to FMC and spoke with Burton Friedman, Personnel Supervisor, concerning the denial of her request for the course training. She testified that she confided in Friedman that she believed Moehringer denied her request because she refused his sexual advances. (Vol. 5, p. 195, line 2 through p. 196, line 12). This testimony, although not specifically refuted, was not corroborated by testimony by Freedman.

16. On March 4, 1981, Moehringer wrote a memorandum to Erjavec stating: "I have reached a definite decision on M. Golin. She has to go. I can't put up any longer with a person of her incompetence level in a job that is key and

critical to my whole area." (Vol. 6, p. 223, line 10 through p. 224, line 7, JD-29). In this writing, Moehringer set forth what he had told Erjavec at their meeting immediately prior to Erjavec's meeting with plaintiff on February 20, 1981. (Vol. 9, p. 40, line 25 through p. 41, line 8). Moehringer felt he had to take a tough stand with his management, whom he was not sure agreed with his decision to terminate. In the March 4 memo, Moehringer wrote, "If I have to force Golin out, the scenario can be so bloody that there may be no survivors." (Vol. 2, p. 37).

17. While Golin was on vacation, Erjavec learned that Moehringer's group did not have available work for her, because users were not happy with her work product. Erjavec therefore concluded that when plaintiff returned from vaca-

tion he would terminate her if she did not resign. (Vol. 6, p. 224, line 17 through 225, line 17). He had reached this decision by March 4, 1981, (Vol. 6, p. 247, lines 4-11), but he did not take any steps to implement the decision. Erjavec went on vacation until March 12, 1981. (Vol. 6, p. 249, line 13).

18. On Monday, March 9, 1981, plaintiff returned to work from her vacation. Moehringer met with her in his office. He gave her a memorandum reprimanding her for failing to adhere to regular working hours. The memo warned that as of March 11 her pay would be reduced for not reporting to work on time. (P-20; Vol. 5, p. 197, line 17 to p. 198, line 13). The plaintiff had a history of lateness with FMC. At trial, Golin did not dispute that she did not adhere to the work hours she was given. Rather,

she argued that because she worked after hours and because other employees and a consultant had different work hours, Moehringer was unreasonable in asking her to work from 8:00 a.m. to 4:30 p.m. As Golin argued in her closing, (Vol. 11, p. 98, lines 19-25), she believed that Moehringer wanted to degrade and humiliate her and, therefore, directed her to comply with work hours.

I found that the conclusions drawn by the plaintiff with regard to this issue were unsupportable. First, although it was the testimony of David Hall that he did not always work from 8:00 a.m. to 4:30 p.m., Hall did not work under the supervision of Moehringer. (Vol. 6, p. 257, lines 1-6, p. 259, line 2). Golin did not offer the testimony of anyone else in her group, or the testimony of anyone who worked under Moehringer, to

corroborate her claim that she was in some way being singled out by being required to work regular hours. Second, the testimony of Robert G. Kiessling that he did not have set working hours, was totally irrelevant on this point. Kiessling was a computer consultant for a company called NSA (and Arms, Incorporated) and was assigned to FMC. He was not employed by FMC. (Vol. 8, p. 92, line 14 through p. 94, line 15).

Moehringer also reprimanded Golin for failing to report to his office as she had been directed. Defendant Moehringer testified that on Monday, March 9 he told her he had recommended to Erjavec that she be terminated. It was during this meeting, for the first time, that plaintiff told Moehringer she was reluctant to go to his office because he made passes at her. She had never before

accused him of this. (Vol. 5, p. 198, line 24 to p. 199 line 4; Vol. 9, p. 41, line 17 through p. 42, line 12). Plaintiff then went to the Personnel Department and contacted Mr. Ed Politi, an Employment Supervisor, and reported to him that Moehringer had been making passes at her. (Vol. 5, p. 199, lines 5-14).

19. Plaintiff alleged that, while under the supervision of Moehringer, she was subject to sexual harassment by him. The events complained of were: Moehringer walking into her each time he came to her office to discuss professional matters, (Vol. 5, p. 153, lines 16-20); Moehringer telling her she could be raped if she worked after hours, (Vol. 5, p. 154, lines 18-22); Moehringer frequently asking for rides home, (Vol. 5, p. 155, lines 9-21); Moehringer rubbing her face with her coat lapel, (Vol. 5, p.

156, line 2 through p. 158, line 22); Moehringer telling plaintiff he would like to hug her, (Vol. 5, p. 159, lines 10-16); Moehringer becoming angry with plaintiff because she refused to go to Middleport, New York, with him the evening before a presentation, (Vol. 5, p. 160, line 12 through p. 161, line 3; Vol. 9, p. 68, lines 9-25), and Moehringer telling her that a subordinate must do everything to please her boss. (Vol. 5, p. 161, lines 8-11). Moehringer denied ever sexually harassing plaintiff or committing any of the acts alleged. (Vol. 8, p. 155, line 17, through p. 156, line 4; Vol. 9, p. 46, lines 12-15, p. 68, lines 9-23, p. 69, lines 6-24, p. 71, lines 1-11).

By special verdict, the jury found by a preponderance of the evidence that Moehringer neither "intentionally

attempted or offered to touch plaintiff Golin with unlawful force against her will," nor "intended to cause such physical contact with plaintiff Golin or intended to cause her immediate apprehension of such contact." The jury also found that "Moehringer did not actually and intentionally [touch] the person of plaintiff Golin (i.e., her body or clothing) with unlawful force against her will[.]" These findings on the assault and battery claims are relevant because the plaintiff asserted the same facts as the basis of her non-jury claims.

The jury also found that Moehringer did not maliciously interfere with Golin's employment. Again, the facts Golin offered to support this claim are the same as those offered in support of her federal and state law employment discrimination claims.

20. On March 11, 1981, the plaintiff received a two-page memorandum from Moehringer in which he informed her that she would be discharged. In support of this move he cited her inability to complete assignments on time, the poor quality of her work and her lack of cooperation. (P-14; Vol. 5, p. 201, line 16 through p. 202, line 24).

21. Upon Erjavec's return to FMC on March 12, 1981, Golin met with Erjavec and Mr. Maurice Duggan, Personnel Manager, and complained to them about Moehringer's alleged sexual overtures. She also then suggested for the first time that other female subordinates had experienced similar problems with Moehringer. (Vol. 5, p. 199, line 15 through p. 200, line 19).

22. Upon plaintiff's complaint of sexual harassment, FMC appointed Ms.

Judith Schunn and Ms. Suzanne Donnelly, professional personnel employees from outside FMC's Princeton facility, to conduct an internal investigation into the allegations. (Vol. 6, p. 175, lines 11-21). These investigators interviewed Golin, Erjavec, Moehringer, and a large number of FMC employees. (Vol. 6, p. 187, lines 4-5). One female employee, Barbara Dvorak, went to Erjavac, before she had been contacted by these investigators, and suggested that she should be interviewed because she believed she had a similar experience with Moehringer. (Vol. 3, p. 28, lines 3-7, Vol. 6, p. 204, line 19 through p. 205, line 18). There is no indication that the investigators did not intend to talk to Dvorak; the record indicates that the investigators simply had not had the opportunity to talk to Dvorak prior to the time she raised the concern

with Erjavec. The FMC investigators concluded that any statements made by Moehringer to Dvorak were innocuous. (Vol. 6, p. 189, lines 20-21).

23. Dvorak's testimony was heard by the Court outside the presence of the jury for a determination of relevance as to the jury issues in the case, and for consideration on the plaintiff's Title VII claims. I ruled that this testimony would not be allowed before the jury because it was too remote to plaintiff's complaint, and the relevance on the question of the assault and battery and tortious interference claims was very slight. (Vol. 3, p. 57, lines 11-18, p. 58 line 25).

Dvorak testified that between 1968 and 1971 she was working for Moehringer. At that time she was experiencing personal domestic problems, as she was separat-

ed and living alone in a new apartment. She testified that Moehringer suggested, on different occasions, that she invite him to see her apartment. (Vol. 3, p. 25, line 19 through p. 26, line 20). She interpreted Moehringer's conduct as "making passes". (Vol. 3, p. 26, line 25 through p. 27, line 1). Dvorak also described his behavior as moody, erratic, and stated that Moehringer played "head games". (Vol. 3, p. 36, line 19 through p. 37, line 9). In 1971, Dvorak resigned her job at FMC, for personal and professional reasons. (Vol. 3, p. 37, line 20). In 1973, she returned to FMC, again worked for Moehringer, (Vol. 3, p. 19 through p. 20, line 12), was given a number of salary increases, and achieved several promotions since the alleged incident.

Dvorak did not testify that the environment at FMC was sexually harassing at any time during plaintiff's tenure. She testified to no recent relevant experience with Moehringer. (Vol. 3, p. 31, lines 6-9).

24. Before concluding their internal investigation, the FMC investigators urged plaintiff to provide them with names of other females allegedly sexually harassed by defendant Moehringer. The plaintiff was reluctant to provide names and, in fact, never did provide any names. (Vol. 6, p. 186, line 18-25). Golin advised Judy Schunn that if assurances against retaliation were given in writing, she would provide witnesses. In conversation between the plaintiff and Judy Schunn, (P-38), surreptitiously tape-recorded by the plaintiff, Ms. Schunn indicated that she wanted to ad-

vise the people at Princeton that plaintiff agreed to identify her witnesses if she was given written assurance that she would not be retaliated against. The plaintiff responded that a written assurance would be sufficient security. (Vol. 6, p. 57, line 10 through p. 58, line 6).

Nick Derrough, Corporate Manager for Equal Employment Opportunity, provided Golin with the written assurance requested. (JD-45). Derrough's letter sets forth the prohibition against retaliation for providing information which supports, clarifies, or documents a problem or charge of discrimination or harassment. It further sets forth the intent of FMC's EEO policy to encourage internal resolution of possible problems. (Vol. 6, p. 39, line 12 through p. 40, line 4).

25. Erjavec also suggested to Golin that she provide names of other women,

(Vol. 6, p. 156, lines 10-12), in order to prove Moehringer's alleged bias, (Vol. 6, p. 161, lines 4-17), especially in light of the fact that the internal investigation by FMC was drawing to a close without substantiation of her allegations. Erjavec never told plaintiff that unless she gave FMC names of witnesses, they would have to let her go. (Vol. 6, p. 145, lines 8-19). Erjavec testified that he had decided that if the investigators concluded the allegations were groundless, he would go through with his original intention to terminate Golin for poor performance. (Vol. 6, p. 156, line 21 through p. 157, line 7).

26. At no time during trial did plaintiff testify that she provided names of other women harassed by Moehringer to the investigators or any other employee of FMC, either before or after receiving

such written assurance. At trial, Golin was referred to the portion of her deposition in which she was asked to provide the basis for her claim that FMC had notice of Moehringer's sexual misconduct. Her response at deposition was that it was based on "gossip". Upon further being asked at deposition as to who said anything to her about claimed sexual harassment or advances on behalf of Moehringer, and what was said by that individual or those individuals, plaintiff responded that those were events that occurred more than two years previous to her deposition testimony and that she hated to misquote people. She further stated that she hated to misquote situations, to misinterpret what was said, by whom it was said, and what the words were. She stated that she had certain impressions at the time, but, that

at the time of the deposition, she did not have a clear recollection that would permit her to be fair or accurate or reasonable about any gossip or comments. Golin testified that she had remembered hearing gossip, but did not have, at deposition, recollection of who these people were. (Vol. 6, p. 45, line 8 through p. 47, line 8).

At trial Golin claimed that other women were sexually harassed by Moehringer, and offered the testimony of Gail Breese Wright in support. Wright testified that, during a birthday party held for her by her co-workers at FMC, Moehringer kissed her on the cheek. She testified that she was not offended by this. (Vol 3, p. 84, lines 10-14; p. 104, line 22 through p. 104, line 2). Wright also testified that she traveled with Moehringer on business trips, that they

spent a week in the same hotel and that Moehringer stood closer than a normal person would when he spoke to her or other persons. She testified that none of these concerned her. (Vol. 3, p. 88, line 1 through p. 90, line 11).

Other male and female witnesses also testified that Moehringer stood close to them, and, although this habit made them uncomfortable, they did not find it offensive. (Vol. 3, p. 115, line 16 through p. 116, line 24; p. 176, lines 6-10). Among those so testifying was Jeanne Root who was called by the plaintiff to offer this testimony. I find the testimony of Wright and the other witnesses credible.

27. Plaintiff's employment with FMC was terminated on April 9, 1981. She was continued on pay status until the end of April 1981. (Vol. 5, p. 226, lines 7-15).

28. During plaintiff's employment

at FMC, and thereafter, she surreptitiously tape-recorded or had recorded at her direction, numerous conversations between herself and supervisors and co-workers at FMC and between her husband and Moehringer concerning the matters at issue in this litigation. Three of these tape recordings were submitted by plaintiff as her trial exhibits. I do not find these conversations significant, either as to the case in chief, or for impeachment purposes.

In the first tape offered into evidence (P. 30) plaintiff's husband, identifying himself as a prospective employer, had a telephone conversation with Moehringer about plaintiff's job qualifications. The phone call took place on June 30, 1981 after Golin's termination. In response to questions about Golin's abilities, Moehringer gave some mild

criticisms as well as some positive response. (Vol. 2, p. 105, line 24 through p. 113, line 24).

The second tape offered into evidence (P. 33) was a recording of a conversation between the plaintiff and Erjavec which took place on March 19, 1981. In that conversation Golin asked Erjavec about the possibility of transfer to another group. Erjavec answered that a transfer was not out of the question, but that it would not be necessary if Moehringer was guilty of the conduct charged. However, if Moehringer was not guilty and because there was neither evidence nor corroboration of Golin's charges, then on the basis of Moehringer's evaluation of Golin's work, she would be fired as he had recommended. (Vol. 6, p. 148, line 5 through p. 160, line 4). Erjavec did not dispute the

contents of the tape recording.

The third tape offered (P. 38) was a recording of a conversation between Golin and Judy Schunn, the FMC investigator, in which Schunn advised the plaintiff that there would be no retaliation.

None of the conversations lend support to the plaintiff's case.

29. On April 10, 1981, plaintiff filed with the New Jersey Department of Law and Public Safety Division of Civil Rights, an amended complaint charging FMC with sexual harassment and retaliation. This complaint was also filed with the Equal Employment Opportunity Commission (Vol. 5, p. 226, lines 17-22). That Commission found no probable cause for the charge made by plaintiff and issued a right-to-sue letter on April 20, 1982 (Attachment to Amended Complaint).

III. CONCLUSIONS OF LAW

1. The plaintiff has complied with all preconditions necessary to bring this civil action, founded upon Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq. (1976), the Law Against Discrimination of the State of New Jersey, N.J.S.A. § 10:5-12, and state law claims, against both defendants.

2. This Court has jurisdiction over the subject matter and of the parties to this action in accordance with 42 U.S.C. § 2000(e)5(f) (3) (1976), and pursuant to 28 U.S.C. §§ 1331 and 1337.

3. The Court has pendent jurisdiction over the state law claims.

4. The Court adopts, confirms, publishes and incorporates as its Order herein the Special Jury Verdict in favor of defendant Moehringer and enters judg-

ment as a matter of law and fact for him on the merits of all issues in this matter.

5. The analytical model for evaluating a complaint of employment discrimination in violation of Title VII was set forth by the Supreme Court in McDonnell Douglas Corporation v. Green, supra, 411 U.S. 792 (1973). Under McDonnell Douglas, a plaintiff alleging employment discrimination must meet the initial burden at trial of establishing a prima facie case of discrimination.

6. When a plaintiff succeeds in establishing a prima facie case, the defendant is then required "to articulate some legitimate, non-discriminatory reasons" for its actions. McDonnell-Douglas Corporation, 411 U.S. at 802. Thereafter, the plaintiff must prove "by a preponderance of the evidence that the le-

gitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Id.

7. To prove her prima facie case of sexual harassment, plaintiff must prove the following;

a. That she belongs to a protected group;

b. That she was subjected to unwanted sexual advances;

c. That the harassment claimed was in fact based upon sex; and

d. That the conduct complained of affected the term, condition,

or privilege of employment. Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982); Bundy v. Jackson, 641 F.2d 934 (D.C. Cir. 1981); Tomkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3d Cir. 1977).

8. Sex-based discrimination under Title VII based on sexual harassment may be predicated on either of two forms of harassment - either quid pro quo harassment or hostile work environment harassment. Quid pro quo harassment involves the conditioning of concrete or tangible employment benefits on the granting of sexual favors. Hostile work environment sexual harassment, while not affecting economic benefits, creates a hostile, offensive, or intimidating work environment that substantially impairs the employee's job performance or psychological well-being. EEOC Guidelines on discrimi-

nation because of sex, 29 C.F.R. § 1604.11(a)-(g) (1986). Meritor Savings Bank v. Vinson, 477 U.S. (1986); Henson v. Dundee, supra; Katz v. Dole, 709 F.2d 251 (4th Cir. 1983); Tomkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3d Cir. 1977).

9. To establish a prima facie case of quid pro quo harassment the plaintiff must prove: (1) that she belongs to a protected group; (2) that she was subject to unwelcome sexual harassment; (3) that the harassment complained of was based upon her sex; and (4) that the employee's reaction to the harassment resulted in an adverse employment decision. Henson v. Dundee, supra. In the context of termination of employment she could show, for example, that her work performance and product output justified her continued employment and that, within the context

of the defendant employer's practice, she would not have been terminated except for the rejection of the sexual harassment Bundy, supra, 641 F.2d at 1953.

10. "[A]n employer is strictly liable for sexual discrimination by supervisors that causes tangible job detriment." Henson, 682 F.2d at 909. To establish a prima facie case of sexual harassment based on a hostile or offensive work environment, the plaintiff must prove: (1) that she belongs to a protected group; (2) that she was in fact subject to unwelcome sexual harassment; (3) that the harassment complained of was based on sex; (4) that the harassment was of such nature and magnitude as to affect a "term, condition, or privilege" of employment; and (5) that the employer knew or should have known of the harassment and failed to take prompt remedial

action. Katz., 709 F.2d at 525; Henson., 682 F.2d at 903-05; Bundy, 641 F.2d at 943; Ferguson v. du Pont de Nemours & Co., 560 F. Supp. 1172, 1197-99 (D. Del. 1983).

11. Plaintiff has failed to establish her case of quid pro quo sexual harassment resulting in a tangible detriment to her employment. First, plaintiff alleged only that Moehringer, her immediate supervisor, harassed her, made passes at her, made suggestive or offensive comments, walked into her, or touched her. No other employee of FMC is alleged to have done anything remotely suggesting sexual harassment, and indeed the record is totally devoid of any evidence suggesting other agents of FMC acted in any such way.

The facts of the interaction between plaintiff and Moehringer were

fully tried to the jury and the jury decided unequivocally that Moehringer did not assault plaintiff and did not maliciously interfere with her employment. Moreover, this Court, having heard all the evidence and evaluated the credibility of all the witnesses, agrees fully with the determination of the jury. The plaintiff's testimony that Moehringer sexually harassed her and made implied "passes" at her was wholly refuted by the credible testiony [sic] of Moehringer and others. Plaintiff's testimony was not credible and seems at best an attempt to twist and distort events, after she was aware of her impending termination, in order to serve her own interest.

The jury finding in favor of Moehringer also compels the conclusion that FMC is not responsible. Corporations, being legal fictions, can only act

through their agents or employees. At a minimum, there would have to be an actor who is found to have done something adverse against plaintiff. Here there is none.

Second, plaintiff was an employee-at-will, and had no reasonable expectation of or basis for a continuation of her employment with FMC. She failed to demonstrate to her employer that she was competent and qualified for continued employment. At best, she was marginally competent and her work habits and disruptive and argumentative behavior justified some strong remedial action, such as termination.

Third, the decision to terminate plaintiff was independently reviewed and ratified by persons who were not involved in, and at that time had no knowledge of, the alleged harassment. Thus,

there is no basis for a finding that plaintiff's response to harassment resulted in the adverse employment decision to terminate her.

12. Plaintiff has also failed to establish a prima facie case of hostile work environment sexual harassment. Plaintiff has failed to establish that there was any sexual harassment much less that Moehringer's supervisors in any way condoned or acquiesced in sexual harassment.

First, the jury decided that Moehringer did not engage in the conduct which the plaintiff seeks to have this Court consider as evidence of harassment.

Second, the plaintiff did not even complain of alleged sexual harassment to anyone in authority at FMC's facilities until after the decision to terminate her had been made, confirmed and ratified by

the appropriate higher authorities.

Third, there is no evidence that any other female employee of FMC experienced any sexual harassment by Moehringer at any time near the period under investigation such that FMC should have been aware of the harassment. No other FMC employee or former employee came forward to voice any such complaint or to support plaintiff. The Dvorak testimony was too remote in time and too dissimilar from the plaintiff's alleged specifics. I find it to be of no probative value even if true. Moreover, the testimony was fully refuted by Moehringer who I find to be credible.

Finally, the record of the actions taken by FMC immediately after Golin made her first allegations of sexual harassment is sufficient evidence that FMC does not condone sexual harassment. FMC's response to the plaintiff's charge was

prompt, fair, and reasonable.

13. To the extent that plaintiff alleges sexual harassment under the provisions of N.J.S.A. 10:5-12, her claims and proofs are subject to the same failing, and she has not made out a prima facie case for all of the same reasons.

14. To the extent plaintiff alleges sex discrimination not related to sexual harassment, she has also failed to establish a prima facie case. The evidence clearly shows that plaintiff was an employee-at-will and not entitled to the expectation of continued employment, absent good cause for termination. Plaintiff has shown no disparate treatment. Moreover, FMC clearly established "good cause" for her termination.

15. Even if the plaintiff had made out a prima facie case of employment discrimination under Title VII or the NJLAD,

FMC has articulated legitimate, non-discriminatory reasons for its decision to terminate plaintiff's employment. The plaintiff has not met her burden by the preponderance of the evidence that such reasons were a pretext for discrimination. Texas Department of Community Affairs v. Burdine, supra, 450 U.S. 248 (1981).

16. To the extent that plaintiff has alleged a retaliatory discharge or a cover-up for her action of coming forward and accusing her supervisor of sexual discrimination, her claim also fails. The plaintiff has failed to establish a prima facie case. Corley v. Jackson Police Dept., 566 F.2d 994 (5th Cir. 1978). As noted by the Court in Hochstadt v. Worcester Foundation for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222

(1st Cir. 1976), "the employee makes out a prima facie case by showing (1) that she engaged in protected activity, i.e., she opposed unlawful employment practices and participated in Title VII proceedings; (2) that her employer was aware of the protected activities; (3) that she was subsequently discharged and (absent other evidence tending to establish retaliatory motive); (4) that her discharge followed her protected activities within such a period of time that the courts can infer retaliatory motives."

17. In view of the verdict of the jury in favor of Moehringer, my conclusion that there was no sexual harassment and that Moehringer's superiors neither condoned nor acquiesced in any alleged sexual harassment, but rather acted promptly and properly when the complaint was first made, I find that no conduct by

any agent or employee of FMC was in violation, as to the plaintiff, of any provision of the Title VII of the Civil Rights Act of 1964, as amended, or of the NJLAD.

18. I have determined that plaintiff was an employee-at-will. No allegations or evidence or proofs establish any public policy exception to her employment relationship which would invoke the exception to termination set forth in New Jersey under the rationale of Pierce v. Ortho Pharmaceuticals Corporation, 84 N.J. 58 (1980) or its progeny. Moehringer urged Golin's termination for poor performance. This, as determined by the jury, was not a malicious interference with her employment. As determined, neither Moehringer nor any other agent or employee of FMC committed any tortious assault on plaintiff. FMC, to the extent

it accepted and ratified Moehringer's conduct, did not commit any prohibited tortious conduct under the state law claims. Judgment in favor of FMC and against the plaintiff will be entered by the court on the subsumed pendent state law tort claims of assault and battery and wrongful termination and for breach of contract.

19. To the extent that any of the foregoing findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the foregoing conclusions of law constitute findings of fact, they are adopted as such. Although, to some extent, I may have incorporated language from proposed findings and conclusions submitted by the parties, these findings and conclusions are entirely my own.

Plaintiff's prayer for relief will be denied in all respects and judgment on all counts entered for both defendants. An Order consistent with this Opinion will be entered.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MICHAELA BERESTEANU GOLIN	:	Civil No. 82-2363 (GEB)
Plaintiff,	:	
v.	:	ORDER OF JUDGEMENT
FMC CORPORATION and GEORGE E. MOEHRINGER,	:	
Defendants.	:	

This matter having been tried before a jury on plaintiff's claims against defendant Moehringer for assault and battery and malicious interference with contract, and before this court on plaintiff's claims against both defendants under Title VII of the Civil Rights Act of 1964, as amended, the New Jersey Law against Discrimination and Breach of Contract, and the jury having found no cause for action, and this Court, by Opinion filed this date, having found for defendants, and against plaintiff, and this

Court having previously on the record dismissed plaintiff's other claims,

It is on this 25th day of August, 1987,

ORDERED, that judgment in this matter is entered against the plaintiff Michaela Beresteanu Golin, and in favor of defendants FMC Corporation and George Moehringer, as to all claims with costs.

s/ Garrett E. Brown, Jr.
GARRETT E. BROWN, JR. U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 88-5054, 88-5233, and 88-5406

Michaela Beresteanu GOLIN,

Appellant in No. 88-5054

vs.

FMC CORPORATION and GEORGE E. MOEHRINGER

Michaela Beresteanu GOLIN,

vs.

FMC CORPORATION and GEORGE E. MOEHRINGER

FMC Corporation,

Appellant in No. 88-5233

Michaela Beresteanu GOLIN,

Appellant in No. 88-5406

vs.

FMC CORPORATION and GEORGE E. MOEHRINGER

Appeal from the United States District Court for the District of New Jersey
(D.C. Civil No. 82-2363)
District Judge: Hon. G. E. Brown, Jr.

Submitted
October 21, 1988
Before: MANSMANN, HUTCHINSON, and VAN DUSEN, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by each appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellants.

BY THE COURT,

s/ Carol Los Mansmann
Circuit Judge

Attest:

/s/
Sally Mrvos, Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 88-5054, 88-5233, and 88-5406

Michaela Beresteanu GOLIN,

Appellant

vs.

FMC CORPORATION and GEORGE E. MOEHRINGER

SUR PETITION FOR REHEARING

Present: GIBBONS, Chief Judge, SEITZ, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, and VAN DUSEN, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of

the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

s/ Carol Los Mansmann
Circuit Judge

UNITED STATES CONSTITUTION
FOURTEENTH AMENDMENT
Rights guaranteed
Privileges and immunities of citizenship, due process and equal protection.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State in which they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, as amended, 42 U.S.C. § 2000e et seq.

§ 2000e-2. Unlawful employment practices.

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; ***.

§ 2000e-3. Other unlawful employment practices.

(a) Discrimination for making charges, testifying, assisting, or participating, in enforcement proceedings.

It shall be an unlawful employment practice for an employer to discrim-

inate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on the job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

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§ 2000e-7. Effect on State laws.

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty,

or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

NEW JERSEY LAW AGAINST DISCRIMINATION
N.J.S.A. 10:5-12 et seq.
Unlawful employment practice or unlawful discrimination

It shall be unlawful employment practice, or, as the case may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, sex or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful consideration other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; ***.

d. For any person to take reprisals against any person because he has opposed an[y] practices or acts forbidden under this act or because he has filed a complaint, testified or assisted in any proceeding under this act.

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N.J.S.A. 10:5-27

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Nothing herein contained shall bar, exclude, or otherwise affect any right or action, civil or criminal, which may exist independently of any right to redress against or specific relief from any unlawful employment practice or unlawful discrimination.

RULES GOVERNING THE COURTS
OF THE
STATE OF NEW JERSEY

1:8-4. Foreman.

Juror number one shall be the foreman; but if he shall be selected as an alternate juror or otherwise discharged, then the juror next drawn on the impanelling of a jury, who remains on the jury for the determination of the issues, shall be the foreman.